NOT INCLUDED IN BOUND VOLUMES

PMH Saginaw and Melvindale, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

KLOCHKO EQUIPMENT RENTAL COMPANY, INC.

Employer

and

Case 07-RC-104929

LOCAL 324, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to a self-determination election held on July 25, 2013 and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows one vote for and none against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings 1

The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us

and recommendations,² and finds that a certification of representative should be issued.

that they are incorrect. $Stretch-Tex\ Co.$, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

The Employer excepts to the hearing officer's failure to include a full description of employee Brian Miller's job duties. To the extent the hearing officer's report does not completely set forth Miller's job duties, we have taken administrative notice of the fact that the Regional Director described them in detail in his June 27, 2013 Decision and Direction of Election.

The Employer filed eight objections, but withdrew Objections 2-5 prior to the hearing. According to the hearing officer, at the hearing, the Employer merged its remaining Objections 1, 6, 7, and 8, and asserted that the Union misrepresented to Miller that if he voted for representation, he would be covered by a separate stand-alone collective-bargaining agreement at the Employer's facility in Saginaw, where he worked. The Employer argued that the Board does not certify bargaining units consisting of a single employee, and therefore the Union misrepresented the law because it would not be able to negotiate an agreement solely on Miller's behalf.

We agree with the hearing officer that Objections 1, 6, 7 and 8, as merged at the hearing, should be overruled. As the hearing officer found, Miller understood that if he voted for representation by the Union, he would be included in the existing bargaining unit at the Employer's Melvindale facility. In addition, the credited evidence fails to show that the Union made any misrepresentations to Miller regarding a separate collective-bargaining agreement. Further, as the hearing officer found, even had there been evidence of an alleged misrepresentation, it would not have warranted setting aside the election under Midland National Life Insurance Co., 263 NLRB 127 (1982), the Board's standard for evaluating campaign misrepresentations, which applies equally to misrepresentations of law. See, e.g., Metropolitan Life Insurance Co., 266 NLRB 507, 508 (1983). Moreover, although the Board adheres to the Midland standard, the result would be the same under the standard articulated in Van Dorn Plastic Machinery Co. v. NLRB, 736 F.2d 343, 348 (6th Cir. 1984), cert. denied 469 U.S. 1208 (1985). See Uniserv, 340 NLRB 199, 199-200 (2003), enfd. NLRB v. United Steel Service, Inc., 159 Fed. Appx. 611 (6th Cir. 2005).

CERTIFICATION OF REPRESENTATIVE

It is certified that Local 324, International Union of Operating Engineers, AFL-CIO may bargain for Brian Miller as part of the existing collective-bargaining unit of mechanics and truck drivers working at the Employer's Melvindale, Michigan facility, which unit is currently represented by the Petitioner.

Dated, Washington, D.C., May 21, 2014

	Mark Gaston Pearce,	Chairman
	Philip A. Miscimarra,	Member
	Kent Y. Hirozawa,	Member
(SEAL)	NATIONAL LABOR RELATIONS	BOARD

Finally, we do not rely on the hearing officer's finding that the Union made no impermissible promise of benefits regarding a separate collective-bargaining agreement, as there was no such objection before the hearing officer.